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April 24, 2009

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: *Ex Parte* Submission, WC Docket Nos. 08-24, 08-49

Dear Ms. Dortch:

Broadview Networks, Inc., Cavalier Telephone, Covad Communications Company, NuVox, and XO Communications, LLC, by their attorneys, hereby respond to Verizon's contention in its April 10, 2009 *ex parte* letter in the above-captioned proceedings that the Commission should include the most recent national figure of cut-the-cord wireless lines from the Centers for Disease Control and Prevention ("CDC") in its analysis of competition in the state of Rhode Island and the Cox service territory in the Virginia Beach Metropolitan Statistical Area ("MSA").¹ The signatories steadfastly maintain that mobile wireless services are not adequate substitutes for wireline services today and that the Commission therefore should not include mobile wireless services in the same product market as wireline services when conducting its competitive market analysis in the above-referenced unbundled network element ("UNE") forbearance proceedings.² Should the Commission decide, however, to include cut-the-cord wireless lines in its analysis, – which it should not – the signatories urge the Commission to

¹ Letter from Nneka Ezenwa, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 08-24, 08-49 (filed Apr. 10, 2009) ("*Verizon April 10 Ex Parte*"), at 4-5.

² See Letter from Brad Mutschelknaus, Counsel to Broadview Networks, Inc., *et al.* to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 08-24, 08-49 (filed Apr. 20, 2009) ("*CLEC April 20 Ex Parte*").

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reject Verizon's self-serving attempt to employ the least geographic market-specific data available to the Commission.

Verizon contends that the Commission should "follow[] its past approach of using the national figure of cut-the-cord households from the Centers for Disease Control and Prevention ...," citing the *Verizon 6-MSA Order*³ in support of this position.⁴ According to Verizon, the national CDC cut-the-cord households figure "is a reasonable proxy for the level of competitive discipline that wireless imposes on wireline in any given market."⁵ However, Verizon completely ignores the Commission's explicit determination in the *Qwest 4-MSA Order*⁶ that a "geographically-specific measure of wireless substitution" is required.⁷ In the *Qwest 4-MSA Order*, the Commission rejected Qwest's attempt to include cut-the-cord wireless lines in the competitive analysis for the Denver, Minneapolis-St. Paul, Phoenix, and Seattle MSAs on the ground that Qwest did not "sufficiently support[] its case for forbearance on the basis of reliable, geographically-specific data regarding the measure of wireless substitution in the four MSAs."⁸ The Commission "emphasize[d] that petitioners relying on mobile wireless substitution to support forbearance relief should submit complete and reliable data that is *geographically specific to the areas for which forbearance is sought*."⁹

Thus, should the Commission determine (which it should not) that cut-the-cord wireless lines are relevant to its analysis of facilities-based competition in the state of Rhode Island and the Cox service territory in the Virginia Beach MSA, Verizon must provide reliable, verifiable data regarding mobile wireless substitution specific to the state of Rhode Island and the Cox service territory within the Virginia Beach MSA before any cut-the-cord wireless data may be taken into account. Verizon has failed to do so and, in fact, has completely ignored the

³ *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, Memorandum Opinion and Order, 22 FCC Rcd 21293 (2007), ("*Verizon 6-MSA Order*"), *appeal pending Verizon Telephone Companies v. Federal Communications Commission*, No. 08-1012 (D.C. Cir.).

⁴ *Verizon April 10 Ex Parte*, at 4, footnote omitted ("As Verizon has explained, the Commission should continue to rely on the national figure.").

⁵ *Id.*

⁶ *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, Memorandum Opinion and Order, 23 FCC Rcd 11884 (2008) ("*Qwest 4-MSA Order*"), *appeal pending Qwest Corp. v. Federal Communications Commission*, No. 08-1257 (D.C. Cir.).

⁷ *Id.*, at ¶ 21.

⁸ *Id.*, at ¶ 22.

⁹ *Id.* (emphasis supplied).

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Commission's directive, instead urging the Commission to employ the least geographically-specific data available. Verizon's self-serving disregard of the Commission's clear directive cannot be ignored and the Commission must find, consistent with its finding in the *Qwest 4-MSA Order*, that Verizon has not met its burden of proof. Cut-the-cord mobile wireless lines must be excluded from the Commission's competitive analysis.

Verizon implicitly acknowledges the Commission's requirement for geographic-specific cut-the-cord wireless data by suggesting that it meets the actual competition requirements of Section 10 using the state-level point estimates of cut-the-cord wireless households contained in the March 2009 CDC report once those figures "are adjusted ... for the significant degree of cord cutting" since those figures were derived.¹⁰ Verizon would have the Commission adjust the state-level point estimates upward by at least 5 percentage points.¹¹ There are several fundamental problems with Verizon's suggestion. First, the state-level figure for Virginia contained in the CDC report is not "geographically specific to the areas for which forbearance is sought" as required by the *Qwest 4-MSA Order*.¹² Verizon is seeking forbearance in the Cox service territory in the Virginia Beach MSA, not the state of Virginia. The Virginia-specific estimate in the CDC report therefore is inapposite. Second, the state-level point estimates in the CDC report are not sufficiently reliable for the Commission to use. The CDC recognized that its state-level estimates involve error and, to provide a measure of the level of uncertainty surrounding them, developed a statistic that it titled "widest plausible intervals."¹³ The reported widest possible intervals are extremely broad and demonstrate just how uncertain the CDC was of its point estimates.¹⁴ Finally, Verizon provides absolutely no evidence as to why a 5 percentage point increase in the CDC state-level point estimates is appropriate. Verizon merely posits that "cord cutting" has increased since the figures were compiled by the CDC.¹⁵ In the absence of any proof that cut-the-cord wireless usage has increased at least 5 percent in the specific geographic markets at issue since the CDC data was compiled, Verizon's proposition must be rejected.

¹⁰ *Verizon April 10 Ex Parte*, at 5. See Steven J. Blumberg, *et al.*, Nat'l Center for Health Statistics, CDC, *Wireless Substitution: State-Level Estimates from the National Health Interview Survey, January-December 2007* (rel. Mar. 11, 2009) ("CDC State Estimates"), available at <http://www.cdc.gov/nchs/data/nhsr014.pdf>.

¹¹ *Id.*

¹² *Qwest 4-MSA Order*, at ¶ 22.

¹³ *CDC State Estimates*, at 9.

¹⁴ For example, the range for the state of Rhode Island is between 0.1 and 15.6 percent. *CDC State Estimates*, at 5.

¹⁵ *Verizon April 10 Ex Parte*, at 5.

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It is hardly surprising that the data Verizon would have the Commission employ in its competitive analysis is the cut-the-cord mobile wireless line data that appears to be the most favorable to Verizon.¹⁶ The Commission should reject this brazen attempt to “game the system” by rejecting Verizon’s ploy and the Commission should exclude cut-the-cord mobile wireless lines from its competitive analysis.

Respectfully submitted,

*Broadview Networks, Inc., Cavalier Telephone,
Covad Communications Company, NuVox,
and XO Communications, LLC*



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¹⁶ *Verizon April 10 Ex Parte*, at 3.